UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. BOISE CASCADE CORPORATION, LABELON CORPORATION, MILLER BREWING COMPANY, NIAGARA MOHAWK POWER CORPORATION, and THE STROH BREWERY COMPANY, Defendants.	**FIRST AMENDMENT TO CONSENT DECREE** Civil Action No. 98-1013(JAF)

WHEREAS, defendants Boise Cascade Corporation, Labelon Corporation, Miller Brewing Company, Niagara Mohawk Power Corporation, and The Stroh Brewery Company (collectively, the "Settling Defendants") and plaintiff United States of America entered into a Consent Decree (the "Consent Decree") in this action concerning the Sealand Restoration Superfund Site located in Lisbon, New York (the "Site"), which was approved by this Court on February 20, 1998; and

WHEREAS, the Consent Decree resolved certain claims under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606 and 9607(a), in connection with the performance of remedial design and remedial action ("RD/RA") work at the Site and reimbursement of response costs; and

WHEREAS, in the course of the performance of the RD/RA by Settling Defendants, information was developed which indicated that it would be appropriate to make a

change in the remedy selected by the U.S. Environmental Protection Agency ("EPA") in a 1995 Record of Decision ("ROD") for the Site; and

WHEREAS, EPA in an Explanation of Significant Differences ("ESD") dated November 2001 (attached hereto as Appendix A) modified the selected remedy to include the placement of a reactive barrier to treat the groundwater instead of the pumping and treatment of contaminated groundwater at the cell disposal area of the Site; and

WHEREAS, the United States and Settling Defendants wish to modify the Consent Decree, including the Statement of Work ("SOW") attached to it, to reflect the ESD; and

WHEREAS, in accordance with Section XXXI of the Consent Decree, the United States has provided the State of New York with a reasonable opportunity to review and comment on the modifications being made to the SOW.

NOW, THEREFORE, in order to promptly undertake such response actions, the parties agree to this First Amendment to Consent Decree as follows:

1. The SOW attached to the Consent Decree is hereby revised in accordance with the modifications set forth in Appendix B hereto. The references in the Consent Decree to "SOW" or "Statement of Work" shall be read to mean the SOW as modified by Appendix B to this First Amendment.

2. Section IV, Paragraph 4 of the Consent Decree is hereby modified as described in the following subparagraphs:

a. Add a new definition after the definition of "EPA" as follows: " "2001 Explanation of Significant Differences" or "2001 ESD" shall mean the EPA Explanation of Significant Differences relating to the Site signed in November, 2001 by the Regional Administrator, EPA

Region II, or her delegate."

b. Delete the definitions of "Phase 1" and "Phase 2."

3. The following Paragraphs, which each contain one or more references to "the 1995 ROD," are hereby revised to change said references to, "the 1995 ROD as amended by the 2001 ESD:"

a. Section I., Paragraph P.;

b. Section IV, Paragraph 4, in the definitions of "Performance Standards" and "Remedial Action;"

c. Section V, Paragraphs 6a and 7;

d. Section VI, Paragraphs 10a, 11a, 12a, and 13a;

e. Section XIV, Paragraphs 46a and 47a;

f. Section XIX., Paragraph 64 (also, the reference to "the 1995 ROD's provisions" shall be revised to read "the provisions of the 1995 ROD as amended by the 2001 ESD"); and

g. Section XXI, Paragraph 82.

4. Section VI, Paragraph 10b, is hereby revised to delete the last sentence.

5. Section VI, Paragraph 11a, is hereby revised by replacing the first two sentences with the following: "Within 60 days after EPA's approval of a final design submittal for the Remedial Action, Settling Defendants shall submit to EPA a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan")." The phrase "related phase of the" shall be deleted from the third sentence of Section VI, Paragraph 11a.

6. Section VI, Paragraph 12a, is hereby renumbered 12, and Paragraph 12b is hereby deleted.

7. Section VI, Paragraphs 13b and 13c, are hereby replaced with the following: "b. For the purposes of this Paragraph and Paragraphs 46 and 47 only, the "scope of the remedy selected in the 1995 ROD as amended by the 2001 ESD" includes the following:

i. Construction of a permeable reactive barrier to intercept contaminated groundwater. This system will consist of a trench on the downgradient side of the former cell disposal area. The trench will be backfilled with granular activated carbon;

ii. Insuring that institutional controls are put in place that both restrict the installation and use of groundwater wells at the Site, and restrict future uses of the Site so that those uses do not compromise the integrity of the components of the Remedial Action;

iii. Continuation of a study to determine if natural attenuation, in the portion of the Site groundwater plume which is not being addressed by the permeable reactive barrier, can reduce the remaining contaminants in the groundwater to maximum contaminant levels ("MCLs") within a reasonable time frame. This will be assessed through obtaining sequential rounds of groundwater quality data, enabling a determination to be made as to whether the plume has reached equilibrium conditions or continues to attenuate. The study will continue to assess the intrinsic capability of the aquifer to naturally reduce contaminants;

iv. long-term monitoring of groundwater and surface water; and

v. evaluation of water level and monitoring data in and around the leachate monitoring/collection system to determine if additional leachate collection is necessary."

8. Section VI, Paragraphs 13d, 13e, and 13f, are hereby renumbered 13c, 13d, and 13e, respectively.

9. Section XVI, Paragraph 51a, is hereby replaced with the following language: "Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs not inconsistent with the National Contingency Plan, other than the first $131,250 of such costs incurred by EPA during the implementation of the Work."

10. Section XVI, Paragraph 51b, is hereby revised by replacing the first two sentences thereof

with the following: "The United States will send Settling Defendants billings for such costs, consistent with paragraph 51a, above. The billings will be accompanied by a printout of cost data in EPA's financial management system (i.e., a SCORPIOS report)." The remainder of Paragraph 51b is unchanged.

11. Section XX, Paragraph 70, is hereby revised by replacing the first and second sentences with the following: "In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 83 of Section XXI (Covenants Not to Sue by Plaintiff), Settling Defendants shall be liable for a stipulated penalty in the amount of $350,000."

12. This First Amendment to Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding this First Amendment disclose facts or considerations which indicate that the Consent Decree with this First Amendment is inappropriate, improper, or inadequate. All other parties to the Consent Decree consent to the entry of this First Amendment without further notice.

13. Each undersigned representative of a Settling Defendant and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this First Amendment and to execute and legally bind such Party to this document.

SO ORDERED THIS DAY OF , 20__.

_____

United States District Judge

THE UNDERSIGNED PARTY enters into this First Amendment to Consent Decree in the matter of United States v. Boise Cascade Corporation, et al. (N.D.N.Y.), regarding the Sealand Restoration Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 3.11.05

Thomas L. Sansonetti
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

Date: _____

Elise S. Feldman
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice

Glenn T. Suddaby
United States Attorney for the
Northern District of New York

Date: _____

James C. Woods, N.Y. Bar No. 102843
Assistant United States Attorney
Northern District of New York
231 James T. Foley Courthouse
445 Broadway
Albany, NY 12207

THE UNDERSIGNED PARTY enters into this First Amendment to Consent Decree in the matter of United States v. Boise Cascade Corporation, et al., (N.D.N.Y.) regarding the Sealand Restoration Superfund Site.

FOR THE UNITED STATES OF AMERICA (Continued)

Date: 1/3/05

for Kathleen C. Callahan
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

THE UNDERSIGNED PARTY enters into this First Amendment to Consent Decree in the matter of United States v. Boise Cascade Corporation, et al., (N.D.N.Y.) regarding the Sealand Restoration Superfund Site.

FOR: OFFICEMAX INCORPORATED, formerly known as:
BOISE CASCADE CORPORATION

Date: 12/16/04

Signature

Guy G. Hurlbutt, Vice President

Name and Title

P.O. Box 50

Address

Boise, ID 83728

THE UNDERSIGNED PARTY enters into this First Amendment to Consent Decree in the matter of United States v. Boise Cascade Corporation, et al., (N.D.N.Y.) regarding the Sealand Restoration Superfund Site.

FOR MILLER BREWING COMPANY

Date: October 27 2004

Signature

Garrett W. Reich, Assistant General Counsel
Name and Title

3939 W. Highland Boulevard
Address

Milwaukee, WI 53208

THE UNDERSIGNED PARTY enters into this First Amendment to Consent Decree in the
matter of United States v. Boise Cascade Corporation, et al., (N.D.N.Y.) regarding the Sealand Restoration Superfund Site.

FOR NIAGARA MOHAWK POWER CORPORATION

Date: 11/8/04

Signature

Clement E. Nadeau, Senior Vice President-Operations
Name and Title

300 Erie Boulevard West
Address

Syracuse, NY 13202

THE UNDERSIGNED PARTY enters into this First Amendment to Consent Decree in the
matter of United States v. Boise Cascade Corporation, et al., (N.D.N.Y.) regarding the Sealand Restoration Superfund Site.

FOR THE STROH BREWERY COMPANY

Date: Oct 28 2004

Signature

George E Kuehn, Exec VP
Name and Title

300 River Place; Suite 5000
Address

Detroit, MI 48207

Explanation of Significant Differences

SEALAND RESTORATION SITE

TOWN OF LISBON
St. Lawrence County, New York

EPA
Region 2

November 2001

MARK YOUR CALENDAR

November 13, 2001 at 7:00 p.m.: Public meeting to discuss this Explanation of Significant Differences (ESD) and the planned construction activities.

Hepburn Library
Main Street
Lisbon, New York

INTRODUCTION

Section 117(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Section 300.435(c)(2)(i) of the National Oil and Hazardous Substances Pollution Contingency Plan require an explanation if, after the selection of a remedial action plan, a component of the action differs in any significant respect from the original action. Any such significant difference, and the reasons for such changes, must be published.

Groundwater investigations at the Sealand Restoration site (Site) revealed the presence of several localized areas of groundwater contamination characterized by high levels of acetone[1] and a VOC plume downgradient of these areas. The remedy selected by the Environmental Protection Agency (EPA) in a 1995 Record of Decision (ROD) for the groundwater called for the extraction and on-site treatment of the high levels of acetone and the performance of a study to determine if natural attenuation[2] could reduce the VOC plume to groundwater standards within a reasonable time frame. The remedy also included the construction of a groundwater extraction and treatment system if it was determined that natural attenuation had little potential to reduce the VOC concentrations to groundwater standards.

Data collected during pre-remedial design sampling have revealed that the acetone concentrations in the groundwater are at levels below the cleanup levels specified in the 1995 ROD. In addition, the results of the natural attenuation study called for in the ROD have indicated that while natural attenuation processes are occurring at the Site, natural attenuation by itself will not be an effective means of reducing the VOC concentrations to groundwater standards in a reasonable time frame. Also, aquifer testing has indicated that the groundwater can only be pumped at very low rates. Consequently, the groundwater extraction system called for in the ROD would not be an effective means of remediating the contaminant plume. Based on these findings, EPA has decided to use an in-place treatment approach combined with natural attenuation to restore the groundwater to federal and state standards.

This ESD will become part of the Administrative Record file for the Site. The Administrative Record includes the technical documents which provide the basis for EPA's remedy decisions at the Site. The Administrative Record includes a 1990 ROD, the Supplemental Remedial Investigation and Feasibility Study (RI/FS) report, the 1995 ROD, the April 1999 Remedial Design Investigation Report, the July 1999 Monitored Natural Attenuation Report, the February 2000 Alternative Technologies Report, the April 2001 Treatability and Permeable Reactive Barrier Material Selection Study, and the June 2001 Remedial Design Report. The Administrative Record is available for public review at the following locations:

Lisbon Town Hall
Lisbon, NY 13658

and

U.S. Environmental Protection Agency
290 Broadway, 18th floor
New York, NY 10007

The changes to the selected remedy are not considered by EPA or the New York State Department of Environmental Conservation (NYSDEC) to be a fundamental alteration of the remedy selected in the 1995 ROD. The remedy modifications maintain the protectiveness of the groundwater

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1 A volatile organic compound (VOC).

2 Natural attenuation is the use of natural processes, such as degradation, dispersion, and dilution, to reduce contaminant concentrations to levels that are protective of human health and the environment.

action with respect to human health and the environment, and comply with federal and state requirements that were identified in the ROD.

SUMMARY OF SITE HISTORY, CONTAMINATION PROBLEMS, AND REMEDIAL EFFORTS

The Site, located in the Town of Lisbon, St. Lawrence County, New York, is situated south of Pray Road, 2.5 miles southwest of the Village of Lisbon. The property, formerly a dairy farm, was acquired by Sealand Restoration Inc. in 1977. Beginning in November 1978, it was operated as a waste disposal facility. Petroleum wastes were either landfilled in a disposal cell near the southern boundary, spread on the ground in the central and northern areas of the Site, or stored adjacent to a barn. The former facility consists of two parcels of land, approximately 210 acres in total area.

The area surrounding the Site is predominantly farmland, with a significant amount of wetlands drained by intermittent low-flow streams. The area is sparsely populated; however, residential homes and farmhouses can be found as close as 100 feet from the facility's property line.

The areas of contamination at the Site included the landspreading area, the cell disposal area, and the drum storage area.

The landspreading area consisted of several distinct open fields where liquid, biodegradable wastes considered "vegetable oil" were intended to be spread on the ground in a thin layer. This oil was to be worked into the soil prior to cultivation. However, the wastes which were landspread were characterized as a petroleum oil-based liquid, containing generally low levels of metals and polychlorinated biphenyls. Improper landspreading practices resulted in episodes where oily wastes drained into nearby streams and wetlands. After the facility was abandoned, most of the fields were cultivated and crops were harvested. Currently, none of the fields are in use.

The cell disposal area, located in the southern part of the Site, was originally designed as a disposal site for oil spill debris containing no readily-drainable fluids. However, oily waste materials, such as chemical solvents used in cleanup operations, were disposed of at this location for approximately one year. Response actions conducted in 1984 and 1989-90 identified and removed a total of 1,680 buried drums and 4,900 cubic yards of contaminated soils in this area.

The drum storage area was an unapproved disposal area located in the northern part of the facility, in the vicinity of a house and barn. Approximately 200 empty or nearly empty drums were stacked in the barnyard. Residues from these drums accumulated as a tar-like sludge on the ground surface and beneath and around the drums. Alongside the barn was an abandoned 2,000-gallon tanker-trailer partially filled with waste oil. A 20,000-gallon waste storage tank was also present southeast of the barn, containing 5,000 gallons of waste oil. The tank was used for the temporary storage of waste oil until it could be landspread on the fields. A gravel pit is also located in this area. The gravel pit was not used as a disposal area. (See figure.)

The following cleanup activities occurred from 1984 through 1988: (1) removal and off-site disposal of 200 drums and the tar-like sludge from the drum storage area located near the barn, including approximately 20 cubic yards of contaminated soils; (2) off-site disposal of the 5,000 gallons of waste oil in the waste-oil tank; (3) dismantling and off-site disposal of the waste-oil tank; (4) removal and off-site disposal of the tanker-trailer; and (5) removal of small quantities of acids and miscellaneous contaminated debris (hoses, buckets, etc.). The cleanup activities were funded by New York State and conducted by St. Lawrence County or by NYSDEC contractors.

From 1986 through 1987, Dames and Moore, under contract with NYSDEC, conducted an investigation of the Site, which concluded that the contaminated wastes and soils from the cell disposal area and drum storage area should be removed. This study also concluded that no remedial action would be needed in the landspreading area.

From 1989 through 1990, NYSDEC's contractor removed 1,445 drums, 4,762 cubic yards of contaminated soil, and 375,000 gallons of liquid from the cell disposal area. The disposal cell was backfilled with clean soil and covered with a multilayered cap to reduce infiltration of rain and snow melt and to control the generation of leachate (contaminated water) which could seep into the underlying groundwater. A leachate monitoring/collection system was installed to monitor the leachate periodically and facilitate its collection, if necessary.

On September 28, 1990, EPA issued its first ROD for the Site. This ROD memorialized EPA's finding that NYSDEC's cleanup actions for the Site were appropriate. The ROD also called for a supplemental RI/FS to determine if there was a need for further cleanup work at the Site.

The supplemental RI/FS was conducted by EPA. Based upon its results, EPA determined that actions to address groundwater contamination were necessary. These findings were documented in a ROD issued by EPA on September 29, 1995.

In September 1997, five potentially responsible parties (PRPs) agreed to conduct the work required in the 1995 ROD. A Consent Decree formalizing this settlement was entered by the Court in February 1998. Soon afterward, the settling PRPs commenced pre-remedial design and remedial design activities. These activities included further delineation of groundwater contamination, aquifer tests, a natural attenuation study, a technologies evaluation, and a treatability study and draft design for a permeable

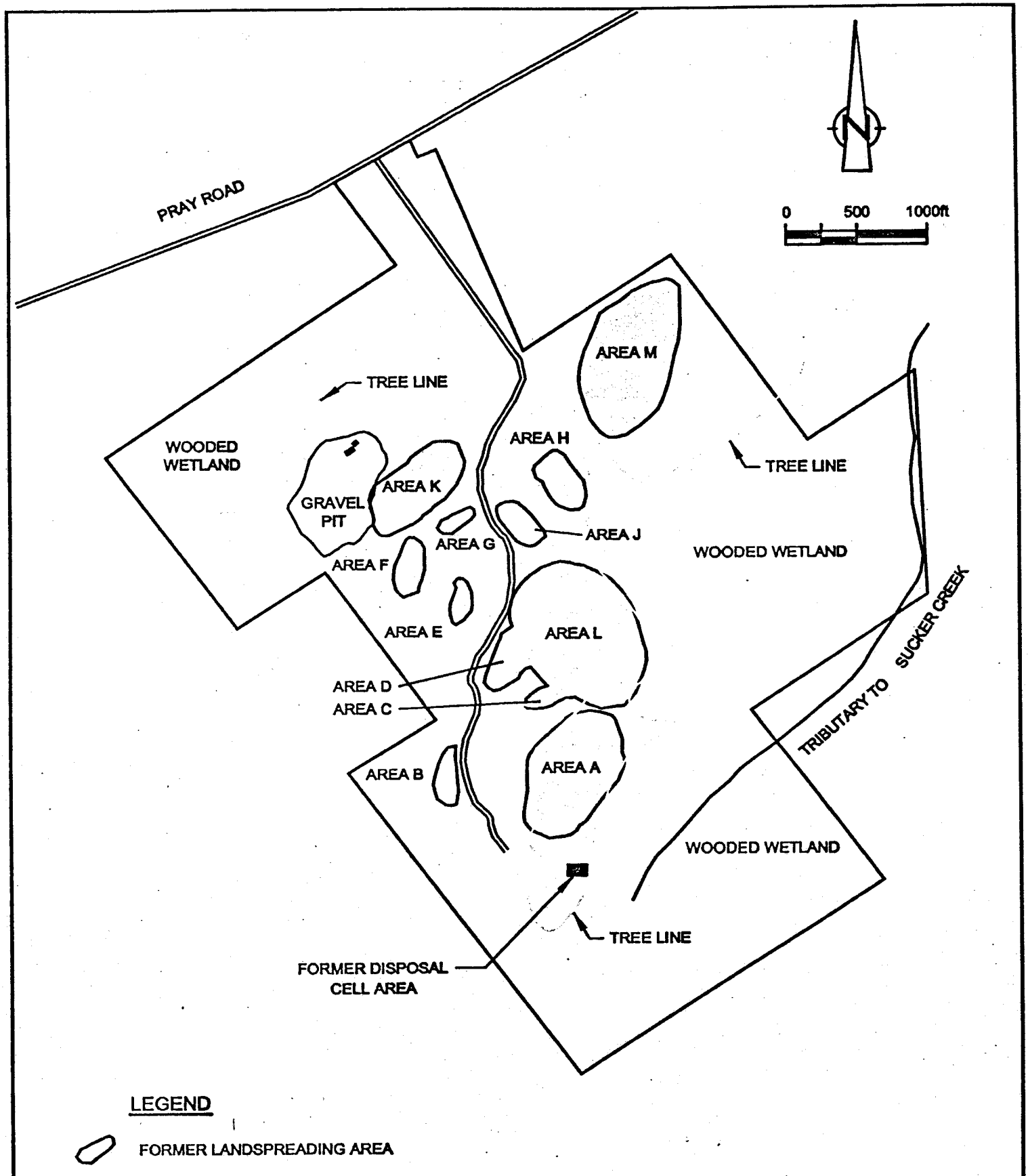


figure 1.2
SITE LAYOUT
DRAFT FINAL (95%) DESIGN REPORT
Sealand Restoration Site - Lisbon, New York

reactive barrier[3].

In May 2000, in response to a request from the St. Lawrence County, the PRPs conducted a geophysical survey and collected soil and groundwater samples in an area of the site that was alleged to have contained an oily sludge. The results of the investigation did not identify any sludge or contamination in this area.

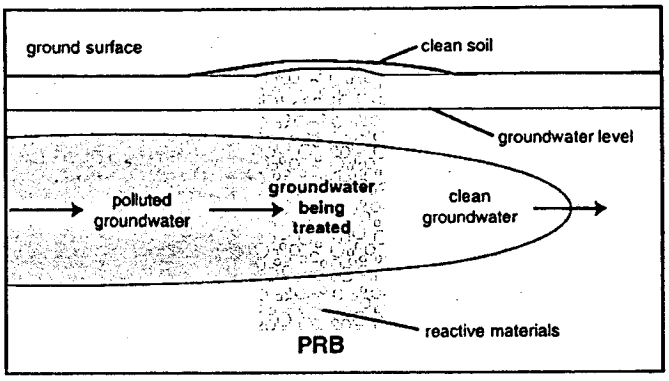
It is anticipated that the remedial design of the modified remedy, which is presently under review by EPA, will be approved shortly. It is anticipated that construction of the remedy will commence in early 2002.

DESCRIPTION OF SIGNIFICANT DIFFERENCES AND THE BASIS FOR THOSE DIFFERENCES

The supplemental RI revealed the presence of several localized areas of groundwater contamination characterized by high levels of acetone and a VOC plume downgradient of these areas. The 1995 ROD for the Site called for the extraction and on-Site treatment of the acetone and the performance of a study to determine if natural attenuation could reduce the VOCs to groundwater standards within a reasonable time frame. The ROD also specified that if it was determined that natural attenuation had little potential to reduce the VOCs to groundwater standards in a reasonable time frame, then a groundwater extraction and treatment system would be installed.

Data collected during pre-remedial design sampling has revealed that the acetone concentrations are either no longer present or are present at levels below the cleanup levels specified in the 1995 ROD. Specifically, acetone concentrations have decreased from 2,100,000 micrograms per liter (µg/l) to 9 µg/l in one area and 3 µg/l in another area (the cleanup level specified in the 1995 ROD for acetone was 50 µg/l). Based on these findings, it has been concluded that further action to address the localized areas of acetone contamination is not warranted.

The results of the natural attenuation study called for in the 1995 ROD indicate that while groundwater natural attenuation processes are occurring in the downgradient areas of the Site, additional measures are necessary to enhance the effectiveness of the natural attenuation processes. As was noted above, the 1995 ROD required groundwater extraction and treatment if it was determined that natural attenuation could not restore groundwater to meet groundwater standards within a reasonable time frame. However, based upon aquifer testing, it has been determined that the aquifer has a low permeability, which would allow the groundwater to be pumped only at a very low rate (0.05 to 0.1 gallon per minute). This would necessitate the installation of an inordinate number of extraction wells to capture the plume. As a result of these findings, alternative groundwater technologies were evaluated. In addition, a treatability study to evaluate the effectiveness of one of the more promising technologies—a permeable reactive barrier—was performed. The results from the treatability study show that a permeable reactive barrier will be an effective technology for the Site. Therefore, EPA has decided to proceed with the construction of a full-scale system[4]. This system will consist of an approximately 130-foot long trench on the downgradient side of the former cell disposal area to a depth of approximately 20 feet below ground surface. The trench will be backfilled with granular activated carbon that will adsorb the VOCs that are present in the groundwater. The compounds adsorbed onto the carbon will then be degraded over time by microorganisms also present on the carbon. EPA believes that this technology, in combination with monitored natural attenuation for the remainder of the groundwater plume, will offer the most technically feasible approach to restoring groundwater quality in a reasonable time frame[5].



Permeable Reactive Barrier (PRB)

SUPPORT AGENCY COMMENTS

NYSDEC, after careful consideration of the modified remedy, supports the modified remedy because of the environmental, public health, and technical advantages and the fact that the modified remedy significantly changes but does not fundamentally alter the remedy selected in the ROD.

AFFIRMATION OF STATUTORY DETERMINATIONS

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[3] A permeable reactive barrier is a subsurface structure which allows groundwater to naturally flow through a permeable media which is capable of removing contaminants from the groundwater. (See figure.)

[4] While cost was not a factor in the decision to modify the remedy, the capital and annual monitoring costs of the modified remedy are estimated to be $100,000 and $110,000, respectively. The capital and annual operation, maintenance, and monitoring costs related to the remedy selected in the 1995 ROD were estimated at $1,191,000 and $162,000, respectively.

[5] Based upon preliminary modeling results, it is estimated that it will take 5-10 years to remediate the aquifer downgradient of the cell disposal area using a permeable reactive barrier in combination with monitored natural attenuation, as compared to an estimated 10-20 years for natural attenuation alone.

EPA and NYSDEC believe that the modified remedy is as protective as the remedy set forth in the 1995 ROD with respect to human health and the environment, it increases the cost-effectiveness of the action, and it complies with federal and state requirements that are applicable or relevant and appropriate to this remedial action. In addition, the remedy as modified continues to utilize permanent solutions and alternative treatment technologies to the maximum extent practicable for the Site.

PUBLIC PARTICIPATION

EPA and NYSDEC rely on public input to ensure that the concerns of the community are considered in selecting an effective remedy for each Superfund site. Toward this end, a public meeting will be held at the Hepburn Library, Main Street, Lisbon, New York on November 13, 2001 at 7:00 p.m. to discuss the ESD and the planned construction activities. Questions or comments related to this ESD or the planned construction activities can also be directed to:

Robert Nunes
Project Manager
U.S. Environmental Protection Agency
290 Broadway, 20th Floor
New York, New York 10007-1866
Telephone: (212) 637-4254
Telefax: (212) 637-3966
e-mail: nunes.robert@epa.gov

APPENDIX B

MODIFICATIONS TO STATEMENT OF WORK SEALAND RESTORATION SITE

The Consent Decree, Appendix B, Statement of Work ("SOW"), is hereby modified as set forth below. All sections of the SOW not referred to below are unchanged, with the exception that references to the Record of Decision ("ROD") will mean the 1995 ROD, as modified by the 2001 Explanation of Significant Differences ("ESD"), and references to the Consent Decree will mean the Consent Decree as modified by the First Amendment thereto. Tasks related to the revised remedy that were in former Sections IV. through X. and XI.A. through XI.C. of the SOW have been completed, and the resulting deliverables have been approved and incorporated into the Work hereunder. As of October 8, 2004, remedial construction has been suspended pending reevaluation of construction methods.

I. WORK TO BE PERFORMED

The objectives of the work to be conducted under the Consent Decree for the Sealand Restoration Site (the "Site") are to:

- minimize migration of contaminated groundwater, and
- restore the on-site groundwater quality to the extent practicable.

These objectives will be met by the implementation of the modified remedy (the "Remedial Action" or "RA") as set forth in the November 2001 ESD for the Site. The major components of the modified remedy include the following:

- Construction of a permeable reactive barrier to intercept contaminated groundwater. This system will consist of an approximately 130-foot long trench on the downgradient side of the former cell disposal area at the Site to a depth of approximately 20 feet below ground surface. The trench will be backfilled with granular activated carbon;
- Insuring that institutional controls are put in place that both restrict the installation and use of groundwater wells at the Site, and restrict future uses of the Site so that those uses do not compromise the integrity of the components of the Remedial Action;
- Continuation of an ongoing study to determine if natural attenuation in the portion of the Site groundwater plume which is not being addressed by the permeable reactive barrier can reduce the remaining contaminants in the groundwater to Maximum Contaminant Levels ("MCLs") within an acceptable time frame. This will be accomplished through obtaining sequential rounds of groundwater quality data to allow a determination to be made as to whether or not the plume has reached

equilibrium conditions or continues to attenuate. The study will continue to assess the intrinsic capability of the aquifer to naturally reduce contaminants;

- Long-term monitoring of groundwater and surface water as necessary; and
- Evaluation of water level and monitoring data in and around the leachate monitoring/collection system to determine if additional leachate collection is necessary.

The work to be performed under the Consent Decree shall include, but shall not be limited to, the following activities:

A. Implementation of the Remedial Action;

B. Operation and maintenance ("O&M"), including post-Remedial Action monitoring, as well as, if determined to be necessary by EPA, the periodic removal and treatment/disposal of the leachate collected from the disposal cell, and/or the replacement of the granular activated carbon in the trench.

III. PROJECT SUPERVISION/MANAGEMENT, PROJECT COORDINATOR
Replace the first sentence with the following: "The Remedial Action, O&M, and any other activities performed. will be under the direction and supervision of a qualified New York State- licensed professional engineer and meet any and all requirements of applicable federal, state, and local laws." The remainder of this Section is unchanged.

IV. PRE-REMEDIAL DESIGN ACTIVITIES Deleted.

V. EXPEDITED ACTION DESIGN ACTIVITIES Deleted.

VI. PRE-REMEDIAL DESIGN/EXPEDITED ACTION REMEDIAL DESIGN WORK PLAN Deleted.

VII. APPROVAL OF PRE-REMEDIAL DESIGN/REMEDIAL DESIGN WORK PLAN Deleted.

VIII. SUPPLEMENTAL ACTION REMEDIAL DESIGN ACTIVITIES Deleted.

IX. REMEDIAL DESIGN AND SUPPLEMENTAL REMEDIAL DESIGN Deleted.

X. APPROVAL OF REMEDIAL DESIGN, PRELIMINARY SUPPLEMENTAL REMEDIAL DESIGN, AND FINAL SUPPLEMENTAL REMEDIAL DESIGN REPORTS Deleted.

XI. EXPEDITED ACTION, is hereby retitled "REMEDIAL ACTION," and paragraphs A., B., and C., are deleted. Paragraph D. is now paragraph A. Paragraph D.1. is deleted and replaced

with the following under new paragraph A.:

1. Settling Defendants shall complete the Remedial Action in accordance with the approved Remedial Action Work Plan (RAWP) and the approved Final Design Report which includes the approved remedial construction schedule.

Paragraph D.2. is now paragraph A.2., and paragraph E. is deleted and replaced with the following:

B. Operation of the Remedial Action

The 1995 ROD, attached to the Consent Decree, lists federal and state MCLs and other criteria for various chemicals, including contaminants detected in the Site groundwater, as Performance Standards for aquifer restoration. Settling Defendants shall operate and maintain the permeable reactive barrier until these Performance Standards are achieved for a period comprising at least 2 consecutive rounds of sampling, after which Settling Defendants shall commence Post-Remediation Monitoring (see Section XVIII, below).

XII. SUPPLEMENTAL REMEDIAL ACTION Deleted.

XIII. OPERATION & MAINTENANCE MANUAL

The entire text of Section XIII. of the SOW is deleted and replaced with the following:

The "O&M Manual" consists of the O&M Plan and the Health and Safety Contingency Plan ("HSCP") that are part of the approved Remedial Design, which was submitted on September 30, 2002. The O&M Plan shall be revised following completion of RA construction. Such revisions to the O&M Plan may include, e.g., changes in sampling procedures to reflect new monitoring well placement during design/construction. The revised O&M Plan shall be submitted to EPA by Settling Defendants within fourteen (14) days following EPA certification that the construction is complete. EPA will approve, disapprove, or require modification of the revised O&M Plan.

XIV. PRE-FINAL INSPECTION, INTERIM REMEDIAL ACTION REPORT, NOTICE OF COMPLETION

The entire text of Section XIV. of the SOW is deleted and replaced with the following:

A. At least three (3) days prior to the completion of construction of the Remedial Action, Settling Defendants and their contractor(s) shall be available to accompany EPA personnel or their representatives on a pre-final inspection. The pre-final inspection shall consist of a walk-over of the Site to determine the completeness of the RA and its consistency with the RD Report, the Consent Decree as modified by the First Amendment, the 1995 ROD as modified by the ESD, and applicable federal and state laws, rules, and regulations.

B. Following the pre-final inspection, EPA will either specify the necessary corrective measures to the RA, as appropriate, or will determine that construction is complete. If EPA requires corrective measures to the RA, Settling Defendants shall undertake the corrective measures according to a schedule approved by the EPA. Within fourteen (14) days after completion of the construction of the corrective measures, Settling Defendants and their contractor(s) shall be available to accompany EPA personnel or their representatives on an inspection, as provided for in the preceding paragraph. After said inspection, EPA will either determine that construction is complete or specify inadequacies in the additional corrective measures as provided above in this paragraph.

C. Within ninety (90) days after Settling Defendants conclude that the remedial construction of the RA has been fully completed, Settling Defendants shall submit a Draft Interim Remedial Action Report to the EPA. The Report shall include the following sections:

1. Introduction

A general description of the Site's history and location and the remedy that was implemented.

2. Chronology of Events

A summary of the major events associated with the RA since the start of the RD.

3. Performance Standards and Construction Quality Control

This section of the Remedial Action Report should provide a summary of the implementation of the construction quality control plan and provide an assurance that the RA was completed in compliance with the requirements of the EPA-approved Final RD Report, the 1995 ROD as modified by the ESD, and the Consent Decree as modified by the First Amendment.

4. Construction Activities

The Construction Activities section should include the following:

a. Narrative description:

This section should include a narrative description of the construction activities undertaken for the RA, including appropriate time frames. Quantities excavated and materials and/or equipment used should be identified in this section and may be presented in tabular format in support of the narrative. The name and the specific role of the major

design and RA contractors should be provided. A verification that all equipment used during the remedial construction has been decontaminated, dismantled, and removed from the Site should also be provided. If the RA as implemented differs in any way from the approved plans and specifications of the Final Remedial Design Report, such modifications shall be identified, and "as built" plans and specifications shall be provided showing all such modifications. The reasons for all such modifications shall be described in detail. The as-built drawings shall be signed and stamped by a professional engineer.

b. Photographs:

This section should include photographs and/or slides that record the progress of remedial construction including, at a minimum, the important features of the Site prior to the commencement of the Work, remedial construction activities for the various tasks, and the appearance of the Site after the remedial construction has been completed.

5. Final Inspection

This section documents the pre-final and final inspections conducted by Settling Defendants and EPA at the completion of construction. This section should include a brief description of any deficient construction items and punch list items which were reported and resolved during the pre-final and final inspections and a list of attendees at the inspection(s). The final resolution of all deficient items should be documented.

6. Certification

This section shall include a certification statement, signed by a responsible corporate official of one or more of Settling Defendants or by Settling Defendants' Project Coordinator, which states the following:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

7. Operation and Maintenance

This section should discuss the highlights of the O&M Plan, as well as provide insight to potential problems/concerns.

8. As-Built-Drawings

Settling Defendants shall submit to EPA the "as-built" engineering drawings for all facilities constructed pursuant to this Consent Decree. The as-built drawings shall be signed and stamped by a professional engineer licensed in the State of New York.

D. EPA will either approve the Draft Interim Remedial Action Report thus making it the Interim Remedial Action Report, require modifications of it, and/or require corrective measures to fully and properly implement the remedial construction. If EPA requires corrective measures to the remedial construction, Settling Defendants shall undertake the corrective measures according to a schedule approved by EPA. Such corrective measures, if any, shall be followed by an inspection, further notification(s) by EPA, and submittal by Settling Defendants of a Draft Revised Interim Remedial Action Report in accordance with paragraph C, above. Upon approval by EPA, the Draft Revised Interim Remedial Action Report shall then become the Interim Remedial Action Report.

E. EPA will determine whether the remedial construction or any portion(s) thereof have been completed in accordance with the standards, specifications and report required by the Consent Decree as amended by the First Amendment.

XV. OPERATION AND MAINTENANCE, NOTICE OF COMPLETION AND FINAL REPORT FOR O&M

Paragraphs A., B., and C. are deleted and replaced with the following:

A. Upon EPA's certification of completion of the construction of the Remedial Action, Settling Defendants shall commence O&M activities in accordance with the approved O&M Manual, which includes the O&M schedule.

B. Within forty (40) days of meeting the Performance Standards as specified in the 1995 ROD as modified by the ESD, and this modified SOW for a period comprising at least two consecutive rounds of sampling, Settling Defendants shall submit to EPA a Notice of Completion and Final Report for O&M.

C. EPA will determine whether the O&M has been completed in accordance with the standards, specifications and reports required by the Consent Decree, as amended by the First Amendment. If EPA determines that they have not been so completed, EPA will notify Settling Defendants in writing of those tasks which must be performed to complete the O&M. Settling Defendants shall then implement the specified activities and tasks in accordance with the specifications and schedules established by EPA and shall then submit a further report on the specified activities and tasks and certification signed by a licensed professional engineer, within thirty (30) days after completion

of the specified activities and tasks. Any modifications to the Final Report for O&M of the Remedial Action required by EPA shall be in accordance with the procedures set forth in the Consent Decree, as amended by the First Amendment.

Paragraph D. is unchanged.

XVII. POST-REMEDIATION MONITORING PLAN

The entire text of Section XVII. of the SOW is deleted and replaced with the following:

A. Within forty (40) days of the date on which all designated monitoring points have recorded readings less than or equal to the Performance Standards specified in the 1995 ROD as modified by the ESD, and this Modified SOW for a period comprising at least 2 consecutive rounds of sampling, Settling Defendants shall submit to EPA a Post-Remediation Monitoring ("PRM") Plan.

B. The PRM Plan shall include, at a minimum, the following:

1. A Site Management Plan ("SMP") for PRM activities. The SMP may be an update of, or an addendum to, the SMP produced for the Remedial Action;

2. A Sampling, Analysis, and Monitoring Plan ("SAMP") for PRM activities providing for monitoring of ground water. At a minimum, groundwater sampling shall be performed and reported on a quarterly basis (*i.e.*, at least four times per year). The SAMP may be an update of, or an addendum to, the SAMP included in the O&M Manual.

3. A Quality Assurance Project Plan ("QAPP") for PRM activities consistent with the QAPP included in the O&M Manual. The QAPP may be an update of, or an addendum to, the QAPP included in the O&M Manual;

4. A Health and Safety Contingency Plan ("HSCP") for PRM activities. The HSCP may be an update of, or an addendum to, the HSCP included in the O&M Manual;

5. A description of work to be performed under PRM activities; and

6 A PRM schedule that identifies the frequency of monitoring and when these activities will commence.

C. EPA will either approve the PRM Plan, or require modification of it, in accordance with the procedures set forth in the Consent Decree, as modified by the First Amendment.

XVIII. POST-REMEDIATION MONITORING

Paragraph B. is deleted and replaced with the following:

B. If contaminant concentrations increase above the Performance Standards (as specified in the 1995 ROD as modified by the ESD, and the SOW) during post-remediation monitoring, EPA will evaluate the need, and may require Settling Defendants to, reinstate the remediation system.

Paragraphs A. and C. are unchanged.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, Plaintiff, v. BOISE CASCADE CORPORATION, LABELON CORPORATION, MILLER BREWING COMPANY, NIAGARA MOHAWK POWER CORPORATION, and THE STROH BREWERY COMPANY, Defendants.	CIVIL ACTION NO.

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CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Sealand Restoration Superfund Site ("Site") in Lisbon, New York, together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New York (the "State") of EPA's negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior and the National Oceanic and Atmospheric Administration of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury

to the natural resources under Federal trusteeship and encouraged the trustee(s) to participate in the negotiation of this Consent Decree.

E. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff or anyone else arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on August 27, 1990.

G. In 1990, EPA assumed the lead enforcement role for the Site and issued a Record of Decision ("1990 ROD") for the Site, which included a determination that further actions may be necessary to protect human health and the environment. Accordingly, EPA determined that a Remedial Investigation and Feasibility Study ("RI/FS") to supplement a prior NYSDEC study was necessary (a) to ascertain whether past remedial actions taken at the Site were effective in removing all contaminant source materials, (b) to supplement existing information as to the nature and extent of Site-related surface/subsurface soil contamination, (c) to supplement existing information as to the nature and extent of Site-related ground water, surface water,

and wetland contamination, and (d) to evaluate the need for possible additional remedial actions.

H. In June of 1991, 22 parties were notified by EPA of their potential liability at the Site and were provided with an opportunity to perform an RI/FS. Negotiations commenced, but ultimately the parties failed to reach an agreement with regard to the work, and EPA financed the performance of the RI/FS.

I. EPA commenced an RI/FS for the Site in 1992, pursuant to 40 C.F.R. § 300.430. Sampling by EPA during its RI revealed that six private drinking water wells in the vicinity of the former Sealand Restoration, Inc. facility were adversely impacted by contaminants of concern, such as arsenic, bis(2-ethylhexyl)-phthalate, lead, and a PCB compound, Aroclor-1248. Aroclor-1248, arsenic, and lead are substances that were consistently detected in soil samples collected at the facility.

J. On September 21, 1993, EPA issued Administrative Order, Index Number II-CERCLA-93-0213 (the "1993 Order"), directing 19 parties to provide an alternate potable supply of water to those identified residences at which private well water samples were found to contain contaminants at significant levels. Fourteen of the 19 parties complied with the 1993 Order, providing bottled water to 9 residences. On June 20, 1995, the 1993 Order recipients were notified that EPA had concluded, based on new information obtained during the RI/FS, that there was no hydrogeologic link between the contaminants impacting the private

wells and the contaminants at the Site, and therefore they were relieved of their obligations under the 1993 Order.

K. EPA completed the RI Report in April of 1995 and the FS Report in June of 1995.

L. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FS and of the proposed plan for remedial action on July 19, 1995, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

M. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("1995 ROD"), executed on September 29, 1995, on which the State had a reasonable opportunity to review and comment and on which the State has given its concurrence. The 1995 ROD includes a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

N. Two de minimis settlements executed between EPA and a total of 45 parties have been embodied in two administrative orders on consent, Index Numbers II-CERCLA-96-0205 and II-CERCLA-96-0205-A. The two settlements were proposed in the Federal Register on April 25, 1997, 62 Fed. Reg. 20176, which announced a

30 day public comment period commencing on that date. No comments were received and the settlements became effective on May 24, 1997. The monies paid by the de minimis settlers were calculated to satisfy potential claims related to both costs incurred to date in performing response actions and for future work to be conducted at the Site. In lieu of providing Settling Defendants with the portion of those monies which were designated for future work at the Site, the amount that Settling Defendants have agreed to pay to the United States has been commensurately reduced. To the extent that the United States recovers additional monies for future work to be conducted at the Site and those monies are designated for that future work, EPA intends, in EPA's sole discretion and consistent with EPA policy, to make those monies available to the parties performing the future work at the Site.

O. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

P. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the 1995 ROD and the Work to be performed by Settling Defendants shall constitute a response action taken or ordered by the President.

Q. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of

this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person

representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorneys' time and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation), XV, and Paragraph 83 of Section XXI.

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund

established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"NYSDEC" shall mean the New York State Department of Environmental Conservation and any successor departments or agencies of the State.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work ("SOW").

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurred and paid in connection with the Site up to the lodging of this Consent Decree, plus interest on all such costs which has accrued pursuant to 42 U.S.C. § 9607(a) through such date.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action as set forth in the 1995 ROD and the SOW.

"Phase 1" shall mean the portion of the remedy selected in the 1995 ROD as described in paragraph 13 b. of this Consent Decree.

"Phase 2" shall mean the portion of the remedy selected in the 1995 ROD as described in paragraph 13 c. of this Consent Decree.

"Plaintiff" shall mean the United States.

"1995 Record of Decision" or "1995 ROD" shall mean the EPA Record of Decision relating to the Site signed on September 29, 1995, by the Regional Administrator, EPA Region II, or her delegate, and all attachments thereto. The 1995 ROD is attached as Appendix A.

"Resource Conservation and Recovery Act" or "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6991.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by Settling Defendants to implement the 1995 ROD, in accordance with the SOW and the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by Settling Defendants to develop the final plans and

specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 10 of this Consent Decree and approved by EPA, and any amendments thereto.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean Boise Cascade Corporation, Labelon Corporation, Miller Brewing Company, Niagara Mohawk Power Corporation, and The Stroh Brewery Company.

"Site" shall mean the Sealand Restoration Superfund Site, including approximately 210 acres, located south of Pray Road in the Town of Lisbon, St. Lawrence County, New York and depicted generally on the map attached as Appendix C. The Site includes the areal extent of contamination and those areas which are necessary for implementation of the Work.

"State" shall mean the State of New York.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by Settling Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by Settling Defendants, to reimburse response costs of the Plaintiff, and to resolve the claims of the Plaintiff against Settling Defendants as provided in this Consent Decree.

6. Commitments by Settling Defendants

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the 1995 ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree. Settling Defendants shall also reimburse the United States for Past Response Costs and Future Response Costs as provided in this Consent Decree.

b. The obligations of Settling Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendants shall complete all such requirements.

7. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the 1995 ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. Where any portion of the Work that is not on-Site requires a federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

9. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Settling Defendants' Supervising Contractor, as well as all other contractors and subcontractors who engage in the "practice of engineering" at the Site on behalf of Settling Defendants, as the "practice of engineering" is defined at Section 7201 of the New York State Education Law, must comply with all applicable New York State legal requirements regarding the practice of professional engineering within the State of New York, including, but not limited to, all applicable requirements of the New York State Education Law and Articles 15 and 15-A of the Business

Corporation Law. Settling Defendants have proposed and EPA has approved Conestoga-Rovers and Associates to be the Supervising Contractor. If at any time Settling Defendants propose to change its approved Supervising Contractor, Settling Defendants shall notify EPA in writing of the name, title, and qualifications of any proposed new supervising contractor, and EPA will issue a notice of disapproval or an authorization to proceed before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA a list of contractors (which does not include the contractor previously disapproved), including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractors that it disapproves and an authorization to proceed with respect to any of the other contractors. Settling Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents Settling Defendants from meeting one or more deadlines in a plan approved by EPA pursuant

to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

10. Remedial Design.

a. Within 75 days after lodging of this Consent Decree, Settling Defendants shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall provide for design of the remedy set forth in the 1995 ROD, in accordance with the SOW and for achievement of the Performance Standards and other requirements set forth in the 1995 ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within 75 days after lodging of this Consent Decree, Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section VIII (Quality Assurance, Sampling and Data Analysis)); (2) a treatability study; (3) a Pre-design Work

Plan; (4) a pre-final/final design submittal; and (5) a Construction Quality Assurance Plan. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan. If EPA determines pursuant to paragraph 13 c., below, that Phase 2 is required, the Settling Defendants shall supplement the Remedial Design Work Plan within 60 days of such determination to include plans and schedules for implementation of the Phase 2 remedial design and those pre-design tasks identified in the SOW, including, but not limited to, a preliminary design submittal.

c. Upon approval of the Remedial Design Work Plan by EPA, or approval of any supplement thereto, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendants shall implement the Remedial Design Work Plan. Settling Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling

and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan ("CQAPP"); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

11. Remedial Action.

a. Within 60 days after the approval of a final design submittal for Phase 1, Settling Defendants shall submit to EPA a work plan for the performance of Phase 1 of the Remedial Action at the Site ("Remedial Action Work Plan"). If Phase 2 is required, within 60 days after the approval of a final design submittal for Phase 2, Settling Defendants shall supplement and submit to EPA a revised Remedial Action Work Plan for the performance of Phase 2 of the Remedial Action at the Site. The Remedial Action Work Plan shall provide for construction and implementation of the related phase of the remedy set forth in

the 1995 ROD and achievement of the Performance Standards, in accordance with this Consent Decree, the 1995 ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Remedial Action Work Plan, Settling Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include the following: (1) the schedule for completion of the Remedial Action; (2) method for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance Plan; (5) a groundwater monitoring plan; (6) methods for satisfying permitting requirements; (7) methodology for implementation of the Operation and Maintenance Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative formulation of the Remedial Action team; (10) construction quality control plan (by constructor); and (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Remedial Action Work Plan also shall include a schedule for implementation of all

Remedial Action tasks identified in the final design submittal and shall identify the initial formulation of the Settling Defendants' Remedial Action Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Remedial Action Work Plan by EPA, or approval of any supplement thereto, after a reasonable opportunity for review and comment by the State, Settling Defendants shall implement the activities required under the Remedial Action Work Plan. Settling Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

12. a. Settling Defendants shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree. Achievement of the Performance Standards shall be demonstrated in accordance with this Consent Decree, the 1995 ROD, and the SOW.

b. Technical Impracticability

i. Any time after EPA determines that Phase 1 of the remedy has been properly completed, Settling Defendants may petition EPA to revise or waive a Performance Standard on the

grounds that it is technically impracticable from an engineering perspective to meet such Performance Standard pursuant to Section 121(d)(4) of CERCLA, 42 U.S.C. § 9621(d)(4). Settling Defendants' petition shall include (1) an identification of each Performance Standard for which a revision or waiver is sought, (2) a detailed justification setting forth the technical basis for the claim that it is technically impracticable from an engineering perspective to meet the given Performance Standard, (3) a proposed alternative Performance Standard for that contaminant, (4) a description of any additional response actions taken or to be taken by Settling Defendants to ensure that the Work is or will be protective of human health and the environment, and that the Work will meet any alternative Performance Standard established pursuant to this Paragraph, and (5) a demonstration that the Work and/or additional response actions proposed by Settling Defendants in the petition will meet any alternative Performance Standard established pursuant to this paragraph and will attain a degree of cleanup and control of further releases which assures protection of human health and the environment. Settling Defendants shall also submit a copy of their petition and supporting information to the State.

ii. Based on its review of the petition and the supporting documentation submitted by Settling Defendants and other relevant information, and after notice and an opportunity to review and comment by the State, EPA shall determine whether to waive compliance with or revise any Performance Standard. If

EPA determines to grant a petition with regard to any proposed alternative Performance Standard and/or any proposed response actions necessary to meet such alternative Performance Standards, Settling Defendants shall take those actions necessary, if any, to meet the alternative Performance Standards. During EPA's review of a petition, EPA may request supplemental information which the petitioner may provide, in its discretion, and the petitioner may provide supplemental information or modify its petition based on discussions with EPA. EPA's determination regarding a petition shall be made in accordance with all applicable laws and regulations in effect at the time of the petition. If any petition to revise or waive a Performance Standard is granted by EPA, the SOW and Work schedule shall be revised in such a manner as EPA determines is necessary to achieve the alternative Performance Standard and the completion of the additional response actions, if any, determined to be necessary by EPA to meet the alternative Performance Standards and to assure the protection of human health and the environment.

iii. The determination of whether attainment of a particular Performance Standard is technically impracticable will be made by EPA, and it will be based on the engineering feasibility and reliability of the remedy. Such determination shall be binding on Settling Defendants, shall be in EPA's sole discretion, and shall not be subject to the dispute resolution procedures provided for in Section XIX (Dispute Resolution) of this Consent Decree, except that Settling Defendants may invoke

the procedures set forth in Paragraph 64 of Section XIX (Dispute Resolution) to dispute the selection of an alternative Performance Standard or additional response action necessary to meet such an alternative Performance Standard other than one proposed in a petition.

iv. Any petition granted pursuant to this Paragraph shall be subject to the provisions of Section VII of this Consent Decree (Remedy Review) and Section 121(c) of CERCLA, 42 U.S.C. § 9621(c).

v. If a petition is rejected, a subsequent petition will be considered by EPA only if EPA determines that it is based on significant new Site-specific data which could not have been developed at the time the previous petition was submitted.

vi. Unless expressly modified by EPA's decision on the petition submitted by Settling Defendants, all requirements of this Consent Decree shall continue in force, and the granting of a waiver or revision of a Performance Standard by EPA shall not relieve Settling Defendants of their obligation to (a) attain Performance Standards for any contaminants for which EPA has not specifically granted a waiver or revision or (b) complete any other obligation under this Consent Decree, including any obligation to achieve any alternative Performance Standard or to conduct any long-term monitoring.

13. Modification of the SOW or Related Work Plans.

a. If EPA determines or if Settling Defendants propose and EPA agrees that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the 1995 ROD, EPA may require that such modification be incorporated in the SOW and/or such work plans. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the 1995 ROD.

b. For the purposes of this Paragraph and Paragraphs 46 and 47 only, the "scope of the remedy selected in the 1995 ROD" is the performance of Phase 1 of the remedy ("Phase 1"), and, to the extent required pursuant to subparagraph c., below, Phase 2 of the remedy. Phase 1 includes the following:

i. extraction and ex-situ biological treatment of contaminated groundwater extracted in the vicinity of the former cell disposal area, specifically "hot spots" in the shallow aquifer and contaminated groundwater in the bedrock aquifer, followed by reinjection to the groundwater or discharge to surface water and long-term monitoring of the groundwater and surface water;

ii. Implementation of processes to secure that institutional controls are in place, including the placement of restrictions on the installation and use of groundwater wells at

the Site, and limitations on the future use of the Site;

iii. Planning and implementing a hydrologic and vegetation monitoring program to monitor impacts to potentially affected wetlands.

iv. The performance of a study to determine if natural attenuation can reduce the remaining contaminants in the groundwater to maximum contaminant levels ("MCLs") within an acceptable time frame through obtaining sequential rounds of groundwater quality data, allowing that a determination be made as to whether the plume has reached equilibrium conditions or continues to attenuate. The study will assess the intrinsic capability of the aquifer to naturally reduce contaminants.

c. As provided in the 1995 ROD, Phase 2 of the remedy ("Phase 2") may be required by EPA if, after implementation of Phase 1, groundwater monitoring results continue to exceed Performance Standards and the natural attenuation study required as part of Phase 1 indicates that natural attenuation has little potential in reducing ground water contamination to levels that meet Performance Standards within a reasonable timeframe, as set forth in the 1995 ROD, unless Settling Defendants demonstrate that achieving Performance Standards in Phase 2 is technically impracticable in accordance with paragraph 12.b. EPA's decision with respect to the implementation of Phase 2 (but not with respect to a petition requesting that EPA revise or waive a performance standard) shall be deemed a determination regarding the adequacy of the remedy within the meaning of Section 113(j)

of CERCLA, 42 U.S.C. § 9613(j), and shall be subject to the dispute resolution provisions of Paragraph 64. Phase 2 shall include the following:

i. extraction and ex-situ biological treatment of extracted contaminated groundwater in an expanded area and for an expanded duration in the vicinity of the former cell disposal area, followed by reinjection to the groundwater or, if groundwater reinjection is not feasible, discharge to surface water;

ii. Chemical pretreatment, if needed, to remove inorganic contaminants prior to the biological treatment unit; and

iii. long-term monitoring of groundwater and surface water.

d. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 64 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

e. Settling Defendants shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

f. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response

actions as otherwise provided in this Consent Decree.

14. Settling Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

15. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. Settling Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material are to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Settling Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Settling Defendants following the award of the contract for Remedial Action construction. Settling Defendants shall provide the information required by Paragraph 15.a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

16. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment as required by Section 121(c) of CERCLA and any applicable regulations.

17. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

18. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

19. Settling Defendants' Obligation To Perform Further Response Actions. If EPA selects further response actions for the Site, Settling Defendants shall undertake such further

response actions to the extent that the reopener conditions in Paragraph 79 or Paragraph 80 (United States' reservations of liability based on unknown conditions or new information) are satisfied. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (1) EPA's determination that the reopener conditions of Paragraph 79 or Paragraph 80 of Section XXI (Covenants Not To Sue by Plaintiff) are satisfied, (2) EPA's determination that the Remedial Action is not protective of human health and the environment, or (3) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 64 (record review).

20. Submissions of Plans. If Settling Defendants are required to perform the further response actions pursuant to Paragraph 19, they shall submit a plan for such work to EPA for approval in accordance with the procedures set forth in Section VI (Performance of the Work by Settling Defendants) and shall implement the plan approved by EPA in accordance with the provisions of this Decree.

VIII. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

21. Settling Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation," (EPA QA/R5; "Preparing Perfect

Project Plans," (EPA /600/9-88/087), and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling Defendants shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" (Revision No. 11, 1992) and the "Contract Lab Program Statement of Work for Organic

Analysis," (Revision No. 9, 1994), and any amendments made thereto during the course of the implementation of this Decree. If analyses are required for which methods are not available through these documents, American Society for Testing Materials or other equivalent methods may be used, if approved by EPA. Settling Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

22. Upon request, Settling Defendants shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. Settling Defendants shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. EPA agrees to notify Settling Defendants not less than 7 days in advance of any sample collection activity it intends to perform independent of Settling Defendants involvement (i.e., other than the collection of split samples), unless a shorter notice is agreed to by the Parties. Upon request, EPA shall allow Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of Settling Defendants' implementation of the Work.

23. Settling Defendants shall submit to EPA copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the implementation of Work under this Consent Decree within 30 days of the date when those results or data become available to Settling Defendants, unless EPA agrees otherwise.

24. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

25. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of Settling Defendants, Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree, including, but not limited to, the following activities:

i. Monitoring the Work;

ii. Verifying any data or information submitted to the United States;

iii. Conducting investigations relating to contamination at or near the Site;

iv. Obtaining samples;

v. Assessing the need for, planning, or implementing additional response actions at or near the Site;

vi. Implementing the Work pursuant to the conditions set forth in Paragraph 83 of this Consent Decree;

vii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);

viii. Assessing Settling Defendants' compliance with this Consent Decree; and

ix. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. an agreement, enforceable by Settling Defendants and the United States with any entity which owns or controls such property, to abide by any obligations and restrictions established regarding the Site, including obligations that are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree or restrictions concerning their refraining from using the Site, or such other property, in any manner that would interfere with or adversely affect the

integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree;

c. if EPA so requests, the execution and recordation in the Recorder's Office or Registry of Deeds or other appropriate land records office of St. Lawrence County, New York, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree, including, but not limited to, those activities listed in Paragraph 25(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 25(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons, as determined by EPA:

i. the United States, on behalf of EPA, and its representatives,

ii. the State and its representatives,

iii. the other Settling Defendants and their representatives, and/or

iv. other appropriate grantees.

d. Within 45 days of the date of a request therefor by EPA, Settling Defendants shall submit to EPA for review and approval with respect to such property:

i. A draft easement that is enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 15 days of EPA's approval and acceptance of the easement, Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, the easement shall be recorded with the Recorder's Office or Registry of Deeds or other appropriate office of St. Lawrence County. Within 30 days of the recording of the easement, Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

26. a. If any access or land/water use restriction agreements required by Paragraphs 25(a) or 25(b) of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, or any access easements or restrictive easements required by Paragraph 25(c) of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of EPA's request therefor, Settling Defendants shall promptly notify the United

States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 25 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. All costs incurred by the United States in obtaining such access and/or land/water use restrictions, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid, shall be deemed Future Response Costs.

b. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.

27. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

28. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA and the State written monthly progress reports that: (a) describe the actions

which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in performing the Work in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Settling Defendants shall submit these progress reports to EPA and the State by the 15th day of every month following the lodging of this Consent Decree until EPA notifies Settling Defendants pursuant to Paragraph 47.b of Section XIV (Certification of Completion). The Parties may agree to vary the frequency and due dates of the monthly progress

reports. If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work. EPA will provide at least 72 hours notice in advance of any requested briefing, except in emergency response situations.

29. Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than 7 days prior to the performance of the activity.

30. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), Settling Defendants shall within 24 hours of the discovery by Settling Defendants or their contractor of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Chief of the New York Remediation Branch, Emergency and Remedial Response Division, EPA Region II, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

31. Within 20 days of the oral notification of an event of the type referred to in the preceding Paragraph, Settling Defendants shall furnish to Plaintiff a written report, signed by

the Settling Defendants' Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

32. Settling Defendants shall submit all plans, reports, and data required by Section VI, above, the SOW, the EPA approved Remedial Design Work Plan, the EPA approved Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in Section VI, above, the SOW, and such approved plans.

33. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

34. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without

first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submissions have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable. Any notice of disapproval shall specify reasons for such disapproval.

35. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 34(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 34(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

36. a. Upon receipt of a notice of disapproval pursuant to Paragraph 34(d), Settling Defendants shall, within 21 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 21 day period or otherwise specified period but shall not be payable unless the

resubmission is disapproved or modified due to a material defect as provided in Paragraphs 37 and 38.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 34(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

37. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the resubmitted plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

38. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the

implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, or if Settling Defendants do not challenge EPA's disapproval or modification by invoking the dispute resolution procedures set forth in Section XIX, stipulated penalties shall accrue for such violation, as provided in Section XX, from the date on which the initial submission was originally required.

39. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

40. Settling Defendants identify, and EPA approves, John Pentilchuk as their designated Project Coordinator, and EPA identifies Robert Nunes as its designated Project Coordinator (see Section XXVI, Notices and Submissions). Within 20 days of lodging this Consent Decree, Settling Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working

days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendants' Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

41. Plaintiff may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

42. Settling Defendants' Project Coordinator shall be available to meet with EPA at EPA's request.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

43. Within 30 days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of $1,500,000 by demonstrating that one or more of the Settling Defendants satisfy the requirements of 40 C.F.R. Part 264.143(f), and Settling defendants shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this Section. Settling Defendants' inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

44. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 43 above after the effective date of this Consent Decree, Settling Defendants may, on any anniversary of the effective date of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the

remaining work to be performed. Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

45. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

46. Completion of the Remedial Action

a. Within 90 days after Settling Defendants conclude that the Remedial Action has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other

Submissions) within 45 days of the inspection. In the report, a registered professional engineer and Settling Defendants' Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

> "I certify under penalty of law that this document and all attachments were prepared under my direct supervision or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph

to the extent that such activities are consistent with the "scope of the remedy selected in the 1995 ROD," as that term is defined in Paragraph 13. EPA will set forth in the notice a schedule for performance of such activities or require Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution). Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendants' obligations under this Consent Decree.

47. Completion of the Work

a. Within 90 days after Settling Defendants conclude that all phases of the Work (including O & M, as necessary), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible corporate official of a Settling Defendant or the Settling Defendants' Project Coordinator:

> "I certify under penalty of law that this document and all attachments were prepared under my direct supervision or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work.

Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the 1995 ROD," as that term is defined in Paragraph 13. EPA will set forth in the notice a schedule for performance of such activities or require Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution). Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify Settling Defendants in writing.

XV. EMERGENCY RESPONSE

48. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or

welfare or the environment, Settling Defendants shall, subject to Paragraph 49, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, Settling Defendants shall notify the Response and Prevention Branch of the Emergency and Remedial Response Division, EPA Region II, at (732 321-6656. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA for all costs of the response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Response Costs).

49. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to

prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiff).

XVI. REIMBURSEMENT OF RESPONSE COSTS

50. Settling Defendants shall pay to the EPA Hazardous Substance Superfund $750,000 in reimbursement of Past Response Costs. Within 30 days of the date of lodging of this Consent Decree, Settling Defendants shall deposit $750,000 into an interest-bearing escrow account. The costs of the escrow and the risk of loss as to any of the principal shall be borne by Settling Defendants. The terms of the escrow agreement shall be subject to prior approval by EPA. Within 10 days of receiving notice of the entry of this Consent Decree, Settling Defendants shall withdraw the principal plus all accrued interest from the escrow account and make payment of that entire amount by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number _____, EPA Region II and Site/Spill ID #022M, and DOJ case number 90-11-3-1144. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of New York following the effective date of the Consent Decree. Any payments received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Settling Defendants shall

send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to:

Ronald Gherardi, Chief
Financial Management Branch
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

51. a. Settling Defendants shall reimburse the EPA Hazardous Substance Superfund for those Future Response Costs not inconsistent with the National Contingency Plan as follows:

i. Settling Defendants agree to reimburse EPA for any costs which exceed $75,000 of oversight costs incurred by EPA during the implementation of Phase 1 of the remedy selected in the 1995 ROD.

ii. If EPA, in its sole discretion, determines pursuant to paragraph 13 c. of the Consent Decree that Phase 2 of the remedy selected in the 1995 ROD is necessary, Settling Defendants agree to reimburse EPA for the cumulative total of any costs which exceed $150,000 of oversight costs incurred by EPA during the implementation of the remedy selected in the 1995 ROD, regardless of whether the costs are or were incurred in connection with Phase 1 or 2 of the remedy selected in the 1995 ROD.

b. The United States will send Settling Defendants a billing for such costs as appropriate, consistent with paragraph 51.a, above, after (1) the completion of Phase 1 of the remedy selected in the 1995 ROD and (2) a determination has been made as to whether Phase 2 is necessary, and periodically thereafter, if

necessary. The billings will be accompanied by a printout of cost data in EPA's financial management system (i.e., a SCORES report). Settling Defendants shall make all payments within 30 days of each bill requiring payment, except as otherwise provided in Paragraph 52. Settling Defendants shall make all payments via electronic funds transfer ("EFT"). Payment shall be remitted via EFT to Mellon Bank, Pittsburgh, Pennsylvania, and Settling Defendants shall provide the following information to their bank:

i. Amount of payment

ii. Title of Mellon Bank account to receive the payment: **EPA**

iii. Account code for Mellon Bank account receiving the payment: **9108544**

iv. Mellon Bank ABA Routing Number: **043000261**

v. Names of Settling Defendants

vi. DOJ Case number: 90-11-3-1144

vii. Site/spill identifier: 022M

Along with this information, Settling Defendants shall instruct their bank to remit payment in the required amount via EFT to EPA's account with Mellon Bank. To ensure that Settling Defendants' payment is properly recorded, Settling Defendants shall send a letter to the United States within one week of the EFT which references the date of the EFT, the payment amount, the name of the Site, the case number, and each Settling Defendant's name and address. Such letter shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to:

Ronald Gherardi, Chief
Financial Management Branch
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

52. Settling Defendants may contest payment of any Future Response Costs under Paragraph 51 if they determine that the United States has made a mathematical error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of the date of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Settling Defendants shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 51. Simultaneously, Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Settling Defendants shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank

statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 10 days of the resolution of the dispute, Settling Defendants shall pay the sums due, with accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 51. If Settling Defendants prevail concerning any aspect of the contested costs, Settling Defendants shall pay that portion of the costs for which they did not prevail, plus associated accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 51; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

53. In the event that the payment required by Paragraph 50 is not made to the United States within 10 days of the Settling Defendants' receipt of notice of entry of this Consent Decree or the payments required by Paragraph 51 are not made within 30 days of the date of each bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest to be paid on Past Response

Costs under this Paragraph shall begin to accrue 10 days after the Settling Defendants' receipt of notice of entry of this Consent Decree. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section. Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 51.

XVII. INDEMNIFICATION AND INSURANCE

54. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized

representatives under Section 104(e) of CERCLA. Further, Settling Defendants agree to reimburse the United States all for all costs it incurs (including, but not limited to, attorneys fees and other expenses of litigation and settlement) arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither Settling Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendants notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 54.a., and shall consult with Settling Defendants prior to settling such claim.

55. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United

States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

56. No later than 15 days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 46.b. of Section XIV (Certification of Completion) comprehensive general liability insurance and automobile insurance with limits of three million dollars, combined single limit naming as additional insured the United States. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. Settling Defendants shall resubmit such certificates each year on the anniversary of the effective date of this Consent Decree, and if said policy changes or is amended during any given year, Settling Defendants shall submit a copy of any such new policies at that time. If Settling

Defendants demonstrate by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. Any insurance required hereunder may be provided by endorsement of blanket policies of insurance.

XVIII. FORCE MAJEURE

57. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that Settling Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

58. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Chief of the New York Remediation Branch, Emergency and Remedial Response Division, EPA Region II, within 3 Working Days of when Settling Defendants first knew that the event might cause a delay. Within 10 days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling

Defendants shall be deemed to know of any circumstance of which Settling Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

59. IF EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

60. If Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's written notice under the preceding Paragraph. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force

majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 57 and 58, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

61. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of Settling Defendants that have not been disputed in accordance with this Section.

62. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

63. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Settling Defendants. The Statement of Position shall specify Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 64 or Paragraph 65.

b. Within 14 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 64 or 65. Within 14 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and Settling Defendants as to whether dispute resolution should proceed under Paragraph 64 or 65, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be

applicable. However, if Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 64 and 65.

64. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the 1995 ROD's provisions or the appropriateness of the remedy selected in the 1995 ROD.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Emergency and Remedial Response Division ("ERRD"), EPA Region II, will issue a final

administrative decision resolving the dispute based on the administrative record described in Paragraph 64.a. This decision shall be binding upon Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 64.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 64.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the ERRD Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 64.a.

65. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 64, the ERRD Director, EPA Region II, will issue a final decision resolving the dispute. The ERRD Director's decision shall be binding on Settling Defendants unless, within 10 days of receipt of the decision, Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph P of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

66. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 75. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that Settling

Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

67. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 68 and 69 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Defendants shall include performance and completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

68. The following stipulated penalties shall accrue per violation per day for any noncompliance with any requirements set forth in this Consent Decree, except for those requirements set forth in Paragraph 69.b., below:

Penalty Per Violation Per Day	Period of Noncompliance
$2,000	1st through the 14th day
$4,000	15th through the 30th day
$8,000	31st day and beyond

69. a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements identified in Subparagraph b:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through the 14th day
$2,000	15th through the 30th day
$4,000	31st day and beyond

b. i. notification and/or change of Supervising Contractor pursuant to Paragraph 9;

ii. notification of any off-site shipments pursuant to Paragraph 15;

iii. notification of sample collection activities pursuant to Paragraph 22;

iv. submittal of sampling data pursuant to Paragraph 23;

v. submission of monthly progress reports pursuant to Paragraph 28;

vi. notification of Alternative Project Coordinator or change of Project Coordinator or Alternative Project Coordinator pursuant to Paragraph 40;

vii. provision for financial assurances pursuant to Paragraph 43;

viii. notification for pre-certification inspections and reports pursuant to Paragraphs 46 and 47;

ix. provision of insurance certification pursuant to Paragraph 56;

x. notification of a force majeure event pursuant to Paragraph 58; and

xi. notification of judicial actions initiated by or against Settling Defendants pursuant to Paragraphs 91 and 92.

70. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 83 of Section XXI (Covenants Not to Sue by Plaintiff) during Phase 1 of the remedy, Settling Defendants shall be liable for a stipulated penalty in the amount of $350,000. If EPA assumes performance of a portion or all of the Work pursuant to Paragraph 83 during Phase 2 of the

remedy, Settling Defendants shall be liable for a stipulated penalty in the amount of $175,000.

71. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the ERRD Director, EPA Region II, under Paragraph 64.b. or 65.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

72. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree,

EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA may send Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Settling Defendants of a violation.

73. All penalties accruing under this Section shall be due and payable to the United States within 30 days of Settling Defendants' receipt of a demand from EPA for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be made by EFT, consistent with Paragraph 51, above.

74. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

75. Penalties shall continue to accrue as provided in Paragraphs 68 and 69 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 30 days of the agreement or the date of EPA's decision or order.

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be

owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c, below.

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

76. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 73.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided herein,

except in the case of a willful violation of the Consent Decree.

77. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

78. In consideration of the actions that will be performed and the payments that will be made by Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 79, 80, and 82 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to Past Response Costs, Future Response Costs, and the Work. Except with respect to future liability, these covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 50 of Section XVI (Reimbursement of Response Costs). With respect to future liability, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 46.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to Settling Defendants and do not extend to any other person.

79. United States' Pre-certification reservations. Notwithstanding any other provision of this Consent Decree, the

United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the Remedial Action:

i. conditions at the Site, previously unknown to EPA, are discovered, or

ii. information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

80. United States' Post-certification reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the Remedial Action:

i. conditions at the Site, previously unknown to EPA, are discovered, or

ii. information, previously unknown to EPA, is received, in whole or in part,

and these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

81. For purposes of Paragraph 79, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the 1995 ROD was signed and set forth in the 1995 ROD for the Site and the administrative record supporting the 1995 ROD. For purposes of Paragraph 80, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the 1995 ROD, the administrative record supporting the 1995 ROD, the post-1995 ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

82. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 78. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants, and Settling Defendants reserve all defenses except as specifically limited in this Consent Decree,

with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) liability for future disposal of Waste Material at the Site, other than as provided in the 1995 ROD, the Work, or otherwise ordered by EPA;

(4) liability for damages for injury to, destruction of, or loss of natural resources, including the reasonable cost of assessing such injury, destruction, or loss;

(5) criminal liability;

(6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action;

(7) liability pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for response costs incurred by the State or the monetary value of any credit which may be granted pursuant to Section 104(c)(5), 42 U.S.C. § 9604(c)(5), by the United States to the State related to costs that the State has incurred at the Site; and

(8) liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but

that cannot be required pursuant to Paragraph 13 (Modification of the SOW or Related Work Plans).

83. Work Takeover In the event EPA determines that Settling Defendants have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 64, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Settling Defendants shall pay pursuant to Section XVI (Reimbursement of Response Costs).

84. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS

85. Covenant Not to Sue. Subject to the reservations in Paragraph 86, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site and Past and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site;

c. any direct or indirect claim or cause of action challenging in any way the de minimis settlements embodied in two administrative orders on consent, numbered CERCLA-96-0205 and CERCLA-96-0205-A; or

d. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities.

86. Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by

the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

87. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

88. Settling Defendants agree to waive all claims or causes of action, including for contribution, for matters addressed in this Consent Decree that they may have against any person who has resolved its liability to the United States in an approved and final settlement for such matters addressed.

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

89. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party

may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

90. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) for matters addressed in this Consent Decree. The "matters addressed" for the purposes of this Consent Decree are Past Response Costs, Future Response Costs, and the Work.

91. Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

92. Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

93. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of

response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

XXIV. ACCESS TO INFORMATION

94. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to Work performed at the Site or the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

95. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to

the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information: and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

96. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

97. Until 6 years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 47.b of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Settling Defendants' receipt of EPA's notification pursuant to Paragraph 47.b of Section XIV (Certification of Completion), Settling Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

98. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. Settling

Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

99. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

100. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided herein. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and Settling Defendants, respectively.

As to the United States:

Seven (7) copies of all work plans, design documents, and technical reports and one (1) copy of all required written communications shall also be sent to:

Chief, Central New York Remediation Section
New York Remediation Branch
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway, 20th Floor
New York, NY 10007-1866

Attention: Sealand Restoration Site Remedial Project Manager

One copy of all required written communications other than work plans, design documents and technical reports shall also be sent to each of the following individuals:

Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, NY 10007-1866

Attention: Sealand Restoration Site Attorney

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Re: DOJ # 90-11-2-1144

As to the State:

When submitting to EPA any written communication required hereunder, Settling Defendants shall simultaneously submit one copy of that communication (unless the given document is a plan or report, in which case six (6) copies shall be submitted) to:

Director, Division of Hazardous Waste Remediation
New York State Department of Environmental Conservation
Room 222
50 Wolf Road
Albany, NY 12233-7010

Attention: Sealand Restoration Site Project Manager

As to Settling Defendants:

Settling Defendants' Project Coordinator
John Pentilchuk
Conestoga-Rovers & Associates
651 Colby Drive
Waterloo, Ontario, Canada N2V 1C2

XXVII. EFFECTIVE DATE

101. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

102. This Court retains jurisdiction over both the subject matter of this Consent Decree and Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

103. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the 1995 ROD.

"Appendix B" is the SOW.

"Appendix C" is the description and/or map of the Site.

XXX. COMMUNITY RELATIONS

104. Settling Defendants shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

105. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and Settling Defendants. All such modifications shall be made in writing.

106. Except as provided in Paragraph 13 ("Modification of the SOW or related Work Plans"), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and Settling Defendants.

107. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

108. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations

which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

109. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

110. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

111. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

112. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal

service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 19__.

_____
United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Boise Cascade Corporation, et al. (N.D.N.Y.), regarding the Sealand Restoration Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: 11/1/97

Lois J. Schiffer
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

Date: _____

Timothy K. Webster
Trial Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice

Thomas J. Maroney
United States Attorney for the
Northern District of New York

Date: _____

Assistant United States Attorney
Office of the United States
Attorney for the Northern
District of New York
445 Broadway, Rm. 231
Albany, New York 12207

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Boise Cascade Corporation, et al. (N.D.N.Y.), regarding the Sealand Restoration Superfund Site.

FOR THE UNITED STATES OF AMERICA
(CONTINUED)

Date: 9/29/97

Jeanne M. Fox
Regional Administrator
Region 2
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Boise Cascade Corporation, et al. relating to the Sealand Restoration Superfund Site.

FOR Boise Cascade Corporation ~~COMPANY, INC.~~

Date: September 26, 1997 _____
[Signature]

[Name -- Please Type] John W. Holleran

[Title -- Please Type] Sr. V.P. & General Counsel

[Address -- Please Type] Boise Cascade Corporation
P.O. Box 50
Boise, ID 83728-0001

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Dennis Radocha

Title: Associate General Counsel

Address: Boise Cascade Corporation, P.O. Box 50, Boise, ID 83728-0001

Tel. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Boise Cascade Corporation, et al. relating to the Sealand Restoration Superfund Site.

FOR Labelon Corp. COMPANY, INC.

Date: 9/22/97

[Signature]

[Name -- Please Type] Warren A. Hookway, Jr.

[Title -- Please Type] Executive Vice President

[Address -- Please Type] Labelon Corporation
10 Chapin Street
Canandaigua, NY 14424

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Jean McCreary, Esq.

Title: Attorney at Law

Address: Nixon, Hargrave, Devans & Doyle
Clinton Square, P.O. Box 1051, Rochester, NY 14202

Tel. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Boise Cascade Corporation, et al. relating to the Sealand Restoration Superfund Site.

FOR Miller Brewing COMPANY ~~XXXXX~~

Date: September 22, 1997 _____
[Signature]

[Name -- Please Type] Garrett W. Reich

[Title -- Please Type] Associate General Counsel

[Address -- Please Type] 3939 W. Highland Blvd.

Milwaukee, Wisconsin 53201-0482

]

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Harold N. Bynum

Title: Partner, Smith Helms Mulliss & Moore, L.L.P.

Address: 300 N. Greene St., Suite 1400
Greensboro, NC 27401

Tel. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Boise Cascade Corporation, et al. relating to the Sealand Restoration Superfund Site.

FOR NIAGARA MOHAWK POWER CORPORATION ~~COMPANY, INC.~~

Date: 9/23/97

[Signature]

[Name -- Please Type] Thomas R. Fair

[Title -- Please Type] Vice President - Environmental Affairs & Ethics

[Address -- Please Type] Environmental Affairs Department, A-2

300 Erie Boulevard West

Syracuse, New York 13202

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Thomas J. O'Neill

Title: Assistant General Counsel

Address: Law Department, A-3
300 Erie Blvd. West, Syracuse, NY 13202

Tel. Number: _____

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Boise Cascade Corporation, et al. relating to the Sealand Restoration Superfund Site.

FOR THE STROH BREWERY COMPANY, INC.

Date: _____

[Signature] _____

[Name -- Please Type] George H. Kuehn

[Title -- Please Type] Senior Vice President and General Counsel

[Address -- Please Type] 100 River Place

Detroit, MI 48207-2739

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Jack D. Shumate, Esq.

Title: Attorney
Butzel Long

Address: 32270 Telegraph Road, Suite 200
Birmingham, MI 48025

Tel. Number: _____